

U.S. DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DISTRICT

JAMES G. ABOUREZK, an individual,)
JANE FONDA, an individual, and)
ROXANNE DUNBAR-ORTIZ, an individual,)

Plaintiff,)

v.)

PROBUSH.COM, INC., a Pennsylvania corporation,)
MICHAEL MARINO, an individual, and)
BEN MARINO, an individual,)

Defendant.)

Civil Action No.

FIRST AMENDED COMPLAINT,

NOTICE OF APPEARANCE,

NOTICE OF PUNITIVE

DAMAGES and

NOTICE OF JURY TRIAL

DEMAND

COMES NOW the Plaintiffs, James Abourezk, Jane Fonda, and Roxanne Dunbar-Ortiz for their First Amended Complaint against Defendants Probush.com Inc., Michael Marino, and Ben Marino they state and allege:

INTRODUCTION

The following action against the Defendants arises from libel of the Plaintiffs. Plaintiffs discovered that they were called a traitor on Defendants website. Under South Dakota Law, such a statement is considered libel per se.

PARTIES

1. Plaintiff is a resident of Sioux Falls, county of Minnehaha, state of South Dakota. He is a former U.S. Senator from South Dakota.
2. Plaintiff Jane Fonda, is a resident of Atlanta, county of Fulton, state of Georgia. She is a renowned film actress and civic activist.
3. Plaintiff Roxanne Dunbar-Ortiz, is a resident of San Francisco, county of San Francisco, state of California. She is an author, historian and professor in the Department of Ethnic Studies at California State University.
4. On information and belief, Defendant, Probush.com Inc. is located at P.O. Box 16, in the city of West Point, state of Pennsylvania. The administrative contact is listed as Michael Marino. See Exhibit A, a true and correct copy of a Whois search, attached hereto and incorporated herein.

5. On information and belief, Defendant, Michael Marino is the editor and publisher of the probush.com website.
6. On information and belief, Defendant Ben Marino resides in the state of Pennsylvania. He is co-owner of Probush.com, Inc.

JURISDICTION and VENUE

7. This Court has jurisdiction over the matter and the parties under 28 USC § 1332. The Plaintiffs request damages in excess of \$75,000. Plaintiff Abourezk is a resident of the state of South Dakota, Plaintiff Fonda is a resident of Georgia, and Plaintiff Dunbar-Ortiz is a resident of California, and the Defendants are, under information and belief, residents of the state of Pennsylvania.
8. Personal jurisdiction over the Defendant's is appropriate in South Dakota under SDCL 15-7-2(1), as they are transacting business in South Dakota by the sale of merchandise from Defendant's website, probush.com, and/or SDCL 15-7-2(2), the accrual in this state of a tort against the Plaintiffs the Defendants committed, and/or SDCL 15-7-2(14), the Defendants maintenance of a website accessible by South Dakota residents.

GENERAL ALLEGATIONS COMMON to all COUNTS

9. On or about April 9, 2003, Plaintiff Abourezk discovered a website, owned and operated by the Defendants, which contained a picture of him and stated he was a traitor. See Exhibit B, a true and correct copy of partial pages from probush.com, alleged hereto and incorporated herein.
10. According to Black's Law Dictionary (6th Ed. Abridged, 1991) at 1040, a traitor is "one who is guilty of treason."
11. Treason is a felony under federal law, 18 USCA § 2381, and South Dakota law, SDCL 22-8-1.
12. The Defendant's statement about the Plaintiffs is libelous under SDCL 20-11-3.
13. Plaintiff Abourezk is an honorably discharged veteran of the United States Navy, a former United States Congressman, and a former U.S. Senator. He also is admitted to practice law before the courts of South Dakota, the District of Columbia, and the U.S. Supreme Court. He has taken oaths to uphold the Constitution of the United States in these positions.
14. Plaintiff's Fonda and Dunbar-Ortiz also knew of Defendant Probush.com, Inc.'s website, which contained pictures of them and stated that they were

traitors. See Exhibit C, a true and correct copy of the "Traitor" list, specifically pages 14 and 15, attached hereto and incorporated herein.

15. Plaintiff Fonda is a highly successful and well-respected actress. She is the daughter of actor Henry Fonda.
16. Plaintiff Dunbar-Ortiz was a founding member of the early women's movement.

COUNT I ---DEFAMATION PER SE

17. The Plaintiffs incorporate the above paragraphs and restates them herein.
18. Defendants have made a false statement by calling the Plaintiffs traitors.
19. Such a statement is libelous per se under South Dakota law as it accuses the Plaintiffs of a criminal act they did not commit.
20. Defendant's disclaimer on its website, probush.com, is ineffective and meaningless.
21. Defendant's libelous statement is intended to injure Plaintiff Abourezk's legal profession and standing in the community.
22. Defendants' libelous statement is intended to injure Plaintiff Fonda's acting career and standing in the community.
23. Defendants' libelous statement is intended to injure Plaintiff Dunbar-Ortiz's career as a professor and author and her standing in the community.
24. Defendants were not privileged to make such false statements about the Plaintiffs.

PRAYER FOR RELIEF

THEREFORE, each Plaintiff prays for the following relief:

- A. Actual damages in the amount of \$ 2 million.
- B. Punitive damages in the amount of \$ 3 million.
- C. The cost and attorney's fees of this action.
- D. Removal of any reference to Plaintiff on Defendant's website.
- E. Any other just and equitable relief.
- F. Public Apologies.

Dated this _____ day of _____, 2004.

James Abourezk
Plaintiff

Dated this _____ day of _____, 2004.

Jane Fonda
Plaintiff

Dated this _____ day of _____, 2004.

Roxanne Dunbar-Ortiz
Plaintiff

VERIFICATION OF COMPLAINT

State of South Dakota :
County of Minnehaha :
SS.

James Abourezk, an individual, being first duly sworn upon under oath says: that he is the Plaintiff above named and has read the above and foregoing instrument, understands the contents thereof, and the same is true according to his own knowledge, except as to matters therein stated upon information and belief, and as to such matters he believes the same to be true.

James Abourezk

Subscribed and sworn to before me this ____ day of _____, 2004.

Notary Public
My Commission Expires:

(SEAL)

VERIFICATION OF COMPLAINT

State of Georgia :
County of Fulton :
SS.

Jane Fonda, an individual, being first duly sworn upon under oath says: that she is the Plaintiff above named and has read the above and foregoing instrument, understands the contents thereof, and the same is true according to her own knowledge, except as to matters therein stated upon information and belief, and as to such matters she believes the same to be true.

Jane Fonda

Subscribed and sworn to before me this ____ day of _____, 2004.

Notary Public
My Commission Expires:

(SEAL)

NOTICE OF APPEARANCE

Todd D. Epp, of counsel, Abourezk Law Offices, P.C., PO Box 1164, Sioux Falls, SD 57101-1164, hereby notes his appearance on behalf of the Plaintiffs above-named.

Dated this _____ day of _____, 2004.

By: _____

Todd D. Epp
Of Counsel
Abourezk Law Offices, P.C.
PO Box 1164
Sioux Falls, SD 57101-1164
(o) 605.334.8402
(f) 605.334-9404
Email: tdepp@aol.com
Attorney for Plaintiffs

NOTICE OF DEMAND FOR PUNITIVE OR EXEMPLARY DAMAGES

The Plaintiffs hereby notify the Defendants and the Court that they are seeking punitive or exemplary damages since they reasonably believe the Defendants actions against them are willful, wanton, and/or malicious.

NOTICE OF JURY TRIAL DEMAND

Plaintiffs demand trial by jury of all issues triable by a jury.

Todd D. Epp

EXHIBIT A



COOL NAME.
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DOMAIN
NAMES

WEB
HOSTING

EMAIL
ACCOUNTS

CREATE A
WEB SITE

DRIVE WEB
SITE TRAFFIC

BACKORDER
DOMAINS

INTERNET
UTILITIES

COPYRIGHT
PROTECTION

Home My Account Help 24/7 Customer Service Reseller Program Company Info Go To: -- Main Site --

WHOIS Database Search

WHOIS Search Results for: PROBUSH.COM

This domain is **NOT Available**
However, you can backorder this domain for just
\$18.95.

Enter another domain to check.

www. PROBUSH

CO

BACKORDER NOW

The data contained in Go Daddy Software, Inc.'s WHOIS database, while believed by the company to be reliable, is provided "as is" with no guarantee or warranties regarding its accuracy. This information is provided for the sole purpose of assisting you in obtaining information about domain name registration records. Any use of this data for any other purpose is expressly forbidden without the prior permission of Go Daddy Software, Inc. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. In particular, you agree not to use this data to allow, enable, or otherwise make possible, dissemination or collection of this data, in part or in its entirety, for any purpose, such as the transmission of unsolicited advertising and solicitations of any kind, including spam. You further agree not to use this data to enable high volume, automated or robotic electronic processes designed to collect or compile this data for any purpose, including mining this data for your own personal or commercial purposes. Please note: the owner of the domain name is specified in the "registrant" field. In most cases, Go Daddy Software, Inc. is not the owner of domain names listed in this database.

Registrant:

ProBush.com, Inc.

PO Box 16

West Point, Pennsylvania 19486

United States

Registered through: Go Daddy Software (<http://www.godaddy.com>)

Domain Name: PROBUSH.COM

Created on: 17-Jul-02

Expires on: 17-Jul-03

Last Updated on: 17-Jul-02

Administrative Contact:

Marino, Michael webmaster@probush.com

ProBush.com, Inc.

PO Box 16

West Point, Pennsylvania 19486

United States

215-654-0692

Technical Contact:

Marino, Michael webmaster@probush.com

ProBush.com, Inc.

PO Box 16

West Point, Pennsylvania 19486
United States
215-654-0692
Domain servers in listed order:
WSC1.JOMAX.NET
WSC2.JOMAX.NET

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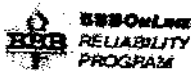


EXHIBIT B

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Traitor List™



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Treason: Violation of allegiance toward one's country or sovereign, especially the betrayal of one's country by waging war against it or by consciously and purposely acting to aid its enemies.

Traitor: If you do not support our President's decisions you are a traitor.

A stylized signature of George W. Bush.

Get to know your traitor!

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**Parody. Not to be taken seriously. These "traitors" are not legal
"traitors" of the United States.*

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Howard Stern

Leave POTUS alone!



Susan Sarandon

Top of my list?

Tribunal for you



Sen. John Kerry



James Abourezk



As'ad AbuKhalil



Dr. Patch Adams



Michael Albert



Robert Altman



Laurie Anderson



Ossie Davis



Zack de la Rocha



Mos Def



Ani Di Franco



Roxanne Dunbar-Ortiz



Michael Eric Dyson



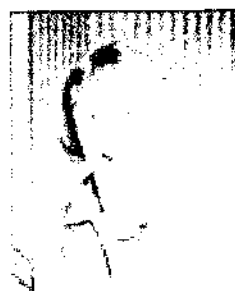
Steve Earle



Laura Flanders



Lawrence Ferlinghetti



Frances D. Fergusson



Jane Fonda



Leo Estrada